

# EXHIBIT 1

**Schoen, Laurence**

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**From:** Haskell, Eric (AGO) <eric.haskell@state.ma.us>  
**Sent:** Friday, October 22, 2021 7:47 AM  
**To:** Nadolenco, John  
**Cc:** Queen, Daniel D.; Schoen, Laurence; Flynn-Poppey, Elissa; Linder, Jason; Callahan, Sandor; Keck, Sasha L.; Jessica Simmons; chaake@autosinnovate.org; Toone, Robert (AGO); Fimognari, Christine (AGO); Fischer-Groban, Phoebe (AGO); Kobick, Julia (AGO)  
**Subject:** RE: AFAl v. Healey: Motion to reopen trial evidence

Sure thing: 09/28/21 and 09/29/21.

Eric

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**From:** Nadolenco, John <JNadolenco@mayerbrown.com>  
**Sent:** Thursday, October 21, 2021 8:38 PM  
**To:** Haskell, Eric (AGO) <eric.haskell@mass.gov>  
**Cc:** Queen, Daniel D. <DQueen@mayerbrown.com>; Schoen, Laurence <LSchoen@mintz.com>; Flynn-Poppey, Elissa <EFlynn-Poppey@mintz.com>; Linder, Jason <JLinder@mayerbrown.com>; Callahan, Sandor <SCallahan@mayerbrown.com>; Keck, Sasha L. <SKeck@mayerbrown.com>; Jessica Simmons <Jsimmons@autosinnovate.org>; chaake@autosinnovate.org; Toone, Robert (AGO) <robert.toone@mass.gov>; Fimognari, Christine (AGO) <Christine.Fimognari@mass.gov>; Fischer-Groban, Phoebe (AGO) <Phoebe.Fischer-Groban@mass.gov>; Kobick, Julia (AGO) <julia.kobick@mass.gov>  
**Subject:** Re: AFAl v. Healey: Motion to reopen trial evidence

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Eric—

Thanks. Please also address my other question(s): when your office first knew of and/or obtained any of the documents.

Thanks much.

John

Sent from my iPad

On Oct 21, 2021, at 4:29 PM, Haskell, Eric (AGO) <[eric.haskell@state.ma.us](mailto:eric.haskell@state.ma.us)> wrote:

**\*\*EXTERNAL SENDER\*\***

Hi John, thanks for the note.

As our motion will set forth, these documents were voluntarily provided by Subaru dealerships in Massachusetts -- specifically, the two identified on the window stickers -- in response to a verbal request from a civil investigator employed by our office.

As we will express in our motion, we believe that, rather than litigate these documents' foundation, the better course is to put them before the court with a minimum of delay and hassle. We hope that AFAI will join us in that view, especially where AFAI has far better access to its member Subaru of America than we do, and can readily confirm these documents' provenance. (I assume that this is the first you/AFAI have heard of these facts, and that AFAI had not previously learned about this from Subaru or otherwise.)

We are also mindful of the way that numerous documents were admitted as trial exhibits where they plainly were records or correspondence of an AAI member OEM. And, of course, that Subaru of America has participated in this case by filing an affidavit in support of the PI motion last December.

Best regards,

Eric

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**From:** Nadolenco, John <[JNadolenco@mayerbrown.com](mailto:JNadolenco@mayerbrown.com)>

**Sent:** Thursday, October 21, 2021 2:52 PM

**To:** Haskell, Eric (AGO) <[eric.haskell@mass.gov](mailto:eric.haskell@mass.gov)>

**Cc:** Queen, Daniel D. <[DQueen@mayerbrown.com](mailto:DQueen@mayerbrown.com)>; Schoen, Laurence <[LSchoen@mintz.com](mailto:LSchoen@mintz.com)>; Flynn-Poppey, Elissa <[EFlynn-Poppey@mintz.com](mailto:EFlynn-Poppey@mintz.com)>; Linder, Jason <[JLinder@mayerbrown.com](mailto:JLinder@mayerbrown.com)>; Callahan, Sandor <[SCallahan@mayerbrown.com](mailto:SCallahan@mayerbrown.com)>; Keck, Sasha L. <[SKeck@mayerbrown.com](mailto:SKeck@mayerbrown.com)>; Jessica Simmons <[JSimmons@autosinnovate.org](mailto:JSimmons@autosinnovate.org)>; [chaake@autosinnovate.org](mailto:chaake@autosinnovate.org); Toone, Robert (AGO) <[robert.toone@mass.gov](mailto:robert.toone@mass.gov)>; Fimognari, Christine (AGO) <[Christine.Fimognari@mass.gov](mailto:Christine.Fimognari@mass.gov)>; Fischer-Groban, Phoebe (AGO) <[Phoebe.Fischer-Groban@mass.gov](mailto:Phoebe.Fischer-Groban@mass.gov)>; Kobick, Julia (AGO) <[julia.kobick@mass.gov](mailto:julia.kobick@mass.gov)>

**Subject:** Re: AFAI v. Healey: Motion to reopen trial evidence

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Eric—

My summer was terrific; hope yours was too.

In helping us better evaluate your motion, can you please let us know the evidentiary foundation for each of the documents? For instance, how does the AG plan to authenticate them and overcome any hearsay objection—especially since at least one of them appears to come from a nonparty that is not even a member of AAI, and Subaru NA was not one of the entities that provided discovery? In addition, please let us know when your office first knew of and/or obtained any of the documents.

We look forward to your response.

John

Sent from my iPad

On Oct 21, 2021, at 12:37 PM, Haskell, Eric (AGO) <[eric.haskell@state.ma.us](mailto:eric.haskell@state.ma.us)> wrote:

**\*\*EXTERNAL SENDER\*\***

Dear John and all,

We hope you had a nice summer focusing on things other than this case. Having said that, though, I'm writing to confer about a motion that we plan to file in this case tomorrow.

It has recently come to our attention that one of AFAI's members, Subaru, has chosen to comply with the Data Access Law by disabling its "StarLink" telematics system in the MY22 vehicles that it recently began to sell to customers in Massachusetts. In our view, this bears on at least your client's contentions: (1) that telematics systems for MY22 vehicles cannot be disabled by the OEM prior to the sale of the new vehicle (ECF #235 page 37 / ¶ 201); and (2) that AFAI's members are aligned in their inability to comply with both the Data Access Law and federal law (ECF #233 page 61 / ¶ 6).

We plan to file, tomorrow, a motion to reopen the trial evidence to admit the four documents attached to this email as new trial exhibits. Each of these documents was obtained from a Subaru dealership in Massachusetts. Proposed trial exhibits 102 and 103 are window stickers for MY22 Subaru vehicles offered for sale: The pertinent portion is the statement "SUBARU STARLINK Safety Plus . . . Not Available to Massachusetts Residents or Businesses."

Please let us know if you will join, will assent to, or will not oppose this relief. We're happy to speak live about this issue, but we are mindful of the court's anticipated timeline for ruling, and it is important to us to put this issue before the court this week. Best regards,

Eric

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